

Appl. No. 10/748,644
Amdt. dated December 4, 2008
Reply to Office Action of September 4, 2008

REMARKS

Claims 1, 2, 4-15, 17, and 21-22 are pending in the instant application. Claims 18 and 20 have been canceled. Claims 3, 16, and 19 were previously canceled. In the Office Action mailed September 4, 2008, the Examiner rejects claims 1, 2, 4-15, 17, 18, and 20-22. Pursuant to 37 C.F.R. § 1.111, reconsideration of the present application in view of the following remarks is respectfully requested.

1. Paragraphs 2 & 3 of the Office Action Mailed September 4, 2008: Rejection of Claims 1-11 Under 35 U.S.C. §112, second paragraph.

In the Office Action mailed September 4, 2008, the Examiner rejects claims 1-11 under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. The Examiner the term "premium container" is unclear, and, therefore, the Examiner interprets as "a container."

Applicants respectfully disagree that the term premium container is indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Premium container is defined in part in the specification at page 3, lines 27-30. Other features of the premium container are described throughout the specification. Applicants believe that one skilled in the art would not have difficulty in determining what a premium container is when interpreted in light of the specification.

The Examiner has not clearly defined why the term "premium" is indefinite in light of the specification. For at least the reason stated above, Applicants submit that claims 1-11 are not indefinite. Accordingly, Applicants respectfully ask the Examiner to withdraw this rejection.

2. Paragraphs 4 & 5 of the Office Action Mailed September 4, 2008: Rejection of Claims 1, 2, 4-11, 12-15, 17, 18, 20, and 21-22 Under 35 U.S.C. §103(a).

Independent Claim 1:

In the Office Action mailed September 4, 2008, the Examiner rejects claims 1, 2, 4-11, 12-15, 17, 18, 20, and 21-22 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent Publication No. 2003/0057026 A1 issued to Poirier (hereinafter "the Poirier Publication") in view of U.S. Patent No. 7,008,106 B2 issued to Cappel (hereinafter "the Cappel Patent"). Applicants respectfully traverse the rejection of claims 1, 2, 4-11, 12-15, 17, 18, 20, and 21-22.

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With respect to claim 1, the Examiner believes that Poirier teaches a method for selling a perishable-receiving premium container, comprising:

providing the premium container adjacent to a display of a perishable, wherein the premium container is adapted to be used by a consumer to place the perishable into the premium container [...providing the container (bag) at the grocery store; Cited at abstract; par. 0004; 0014; figures 1-2];

charging the consumer for the perishable [...customer purchase of selected merchandise (food) which imply the merchandise has to be charged; Cited at par. 0014];

charging the consumer for the premium container based on indicia on the premium container [...the bags/container may be sold to customer at retail grocery store; Cited at par. 0009; par. 0014 and figures 2-3].

However, the Examiner believes the Poirier Publication does not mention the indicia on the container; controlling an element with the premium container, wherein the element is selected from the group consisting of humidity, temperature, physical impact, odor, microbes, liquid leakage, liquid, gas mix, excel oil, and light.

The Examiner believes the Cappel Patent discloses the container with a price tag/indicia [Cited at col. 8, lines 1-5 and figures 5a-b; 6a-b shows price tag (56) on the bag]; wherein the container/zip lock bag has a slider (32) to seal the bag for controlling the microbes, temperature, gas mix, humidity [Cited at least in figures 5a-b, 6a-b, 8a-b]. The Examiner interprets these figures to meet the claimed limitation. Therefore, the Examiner believes it would have been obvious to one of ordinary skill in the art at the time of the invention to include the method of selling the container and charging for the perishable as taught by the Poirier Publication with the method of having slider bag/container as taught by the Cappel Patent in order to make it convenient for the customer to use and also to protect the food from decay.

Applicants have amended claim 1 to include the limitation of a using a microbe control feature that generates chlorine dioxide gas. Neither Poirier nor Cappel show or suggest the use of chloring dioxide gas to control microbes. This limitation is completely missing from the cited art. Therefore, Applicants respectfully request that the obviousness rejection be withdrawn.

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Dependent Claims 2-11

With respect to claim 2, the Examiner believes the Poirier Publication discloses further comprising providing a perishable, wherein the perishable is of a type selected from the group consisting of produce, deli, fast food, quick-serve food, frozen food, baked goods, meat, fish, and floral [...merchandise (food) at grocery store; Cited at par. 0014 and figure 1].

With respect to claim 4, the Examiner believes the Cappel Patent discloses providing indicia related to the container indicative of a price of the container, wherein the indicia is selected a price tag [Cited at Fig. 5a and 5b.]

With respect to claim 5, the Examiner believes the Cappel Patent discloses the container being resealable [Cited at col. 1, lines 15-17, figures 1-2].

With respect to claim 6, the Examiner believes the Poirier Publication discloses a plurality of the containers [...providing bags; Cited at figures 2-3].

With respect to claim 7, the Examiner believes the Cappel Patent discloses wherein the providing step includes providing the container of a wicket [Cited at figure 1-2].

With respect to claim 8, the Examiner believes the Cappel Patent discloses the container on a roll [...purchase package of slider bags/container; Cited at col. 1, lines 37-40].

With respect to claim 9, the Examiner believes the Cappel Patent discloses a container in a box [...purchase package of slider bags/container; Cited at col. 1, lines 37-40].

With respect to claim 10, the Examiner believes the Cappel Patent discloses the container is disposable [...plastic slider bags; Cited at col. 1, lines 59-60].

With respect to claim 11, the Examiner believes the Cappel Patent discloses allowing a consumer to place the perishable into the container and to seal the container [...open the slider bag; use a portion of the produce and reclose the bag; Cited at col. 1, lines 48-50].

Claims 2 and 4-11 are dependent on amended claim 1. For the same reasons discussed above, Applicants respectfully request that the obviousness rejection be withdrawn on these dependent claims.

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Independent Claim 12:

With respect to claim 12, the Examiner believes the Poirier Publication discloses a method for offering a consumer a choice between disposable perishable-receiving containers, the method comprising:

providing a premium container adjacent to a perishable [...providing container (selling bags that can be re-usable) at grocery store; Cited at par. 0004; par. 0014];

providing a standard container adjacent to the perishable [...providing container (bag which is previously used) at grocery store; Cited at par. 0005; par. 0014];

allowing the consumer to choose between the standard and premium containers [...allowing the consumer the choice of either using a previously used bag or using a bag from the store; Cited at figure 2]; and

charging the consumer for the container chosen based on indicia on the container, wherein the charge for the premium container is greater than the charge for the standard container [...*there may be a charge for using the bags that are from store; and there is no charge for the bag that consumer has from previous purchase*; Cited at par. 0009; par. 0014].

However, the Examiner believes the Poirier Publication does not teach while the Cappel Patent discloses the indicia on the container [...price tag on the bag; Cited at col. 8, lines 1-5 and figures 5a-b].

The Examiner believes, therefore, that it would have been obvious to one of ordinary skill in the art at the time of the invention to include the method of selling the container and charging for the perishable as taught by the Poirier Publication with the method of having a price tag on the container as taught by the Cappel Patent in order to make it easy for the consumer as well as the store personnel.

Claim 12 has been amended to include the limitation "wherein the premium container controls microbes through a microbe control feature that generates chlorine dioxide gas." As discussed above, neither Poirer nor Cappel show or suggest the use of chlorine dioxide gas to control microbes. This limitation is completely missing from the cited art. Therefore, Applicants respectfully request that the obviousness rejection of claim 12 be withdrawn.

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Dependent claims 13-15 and 17-18:

With respect to claim 13, the Examiner believes the Cappel Patent discloses the indicia is selected from the group consisting of a bar code, a chip, a smart tag, an electronically-based indicator, a magnetically-based indicator, a price tag, a produce-type number, a model number, a color, a container shape, and a SKU [...a price tag; Cited at col. 8, lines 1-5 and figures 5a-b].

With respect to claim 14, the Examiner believes the Poirier Publication discloses wherein the charge for the standard container is zero [...there is no charge for the bag that the consumer has from a previous purchase; Cited at par. 0009; par. 0014]. Furthermore, the Examiner believes it is obvious that the plastic produce bags are usually provided (without charge) to hold the selected fruits and vegetables at the supermarkets or grocery store.

With respect to claim 15, the Examiner believes the Cappel Patent discloses wherein the premium container has an element-control feature [...slider bag with zipper (22) to thermally fuse; Cited at col. 6, lines 44-42 and figures 1-2].

With respect to claim 17, the Examiner believes the Cappel Patent discloses the premium container has a plurality of element-control features [...a plastic bag with re-closable zipper and the slider; Cited at abstract].

Claims 13-15 and 17-18 are dependent on amended claim 1. For the same reasons discussed above, Applicants respectfully request that the obviousness rejection be withdrawn on these dependent claims.

Claims 18 and 20:

Claims 18 and 20 have been cancelled.

Independent Claim 21:

With respect to claim 21, the Examiner believes the Cappel Patent discloses a method for producing a perishable-receiving premium container, the method comprising:

assembling the plurality of premium containers to facilitate dispensing to a consumer and/or a retail worker [...*merchant provides customers with re-usable bags for transporting their purchase*; Cited at abstract].

However, the Examiner believes the Poirier Publication does not teach manufacturing a plurality of premium containers, wherein each premium container includes an element-control feature selected from the group consisting of humidity, temperature, physical impact odor, microbes, liquid leakage liquid, gas mix, excel oil, and light and an indicia of the price of the

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premium container and an indicia of the price of the container. The Examiner also believes the Cappel Patent discloses the container with a price tag/indicia [...Cited at col. 8, lines 1-5 and figures 5a-b; 6a-b shows price tag (56) on the bag]; wherein the Examiner believes the container/zip lock bag has a slider (32) to seal the bag for controlling the microbes, temperature, gas mix, humidity as shown at least in figures 5a-b, 6a-b, and 8a-b].

The Examiner believes, therefore, that it would have been obvious to one of ordinary skill in the art at the time of the invention to include the method of selling the container and charging for the perishable as taught by the Poirier Publication with the method of having the slider bag/container as taught by the Cappel Patent in order to make it convenient for the consumer to use and also to protect the food from decay.

With respect to claim 22, the Examiner believes the Cappel Patent discloses the plurality of premium containers are disposable [...plastic slider bags; Cited at col. 1, lines 59-60].

For at least the reasons stated above, Applicants submit that claims 1, 2, 4011, 12-15, 17, 18, 20, and 21-22 are not unpatentable over the Poirier Publication in view of the Cappel Patent. Accordingly, Applicants respectfully ask the Examiner to withdraw the rejection.

Claim 21 has been amended to include the limitation "wherein indicia is selected from the group consisting of a chip, a smart tag, an electronically-based indicator, and a magnetically-based indicator." Neither Poirier nor Cappel show or suggest indicia consisting of a chip or other electronic or magnetic indicators. Because this feature is completely missing, Applicants respectfully request that the obvious rejection be withdrawn.

3. Conclusion

Applicants intend to be fully responsive to the outstanding Office Action. If the Examiner detects any issue which the Examiner believes Applicants have not addressed in this response, or if any additional information is required, the Examiner is respectfully requested to contact the undersigned at (920) 721-4043.

Applicants sincerely believe that this Patent Application is now in condition for allowance and respectfully request favorable consideration and the timely allowance of pending claims 1, 2, 4-15, 17, 18, and 20-22.

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The Commissioner is hereby authorized to charge any prosecutorial fees (or credit any overpayment) associated with this communication to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875. If a fee is required for an extension of time under 27 C.F.R. 1.136 not accounted for above, such extension is requested and should also be charged to our Deposit Account.

Respectfully submitted,

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By:


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CERTIFICATE OF TRANSMISSION

I, Judy Garot, hereby certify that on December 4, 2008 this document is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. (571) 273-8300.

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